



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 28, 1995

Ms. Robin Collins
Attorney for Ysleta Independent
School District
Rodriguez, Lewis & Collins
1220 Montana Avenue
El Paso, Texas 79902

OR95-718

Dear Ms. Collins:

You ask whether certain documents sought by Ms. Kay Joslin Walling on behalf of Mr. Leon Wade are subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33804.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

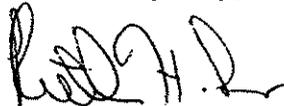
We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

On May 25, 1995, we asked you for copies of the records at issue. To date we have not received these records.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office has no basis on which to conclude that the requested records are excepted from required public disclosure. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the information is presumed to be public.¹

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/RWP/rho

Ref.: ID# 33804

cc: Ms. Day Joslin Walling
UniServ Representative
Texas State Teachers Association
6632 Continental Drive
El Paso, Texas 79925

¹Your contention that the requested records need not be released to the public because they do not comprise a "completed" report is without merit. Section 552.022 of the Government Code provides that, *inter alia*, a "completed report" made for or by a governmental body is public information. However, this section does not imply that "incomplete" reports, or reports that have not been "accepted" by a governmental body, are automatically excepted from required disclosure. Open Records Decision No. 460 (1987) (interpreting predecessor statute). The applicable test for required disclosure is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure listed under subchapter C of Chapter 552. *Id.*